

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

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| EDWARD TOM DAVIS, JR., ET AL, | § | |
| | § | |
| VS. | § | CIVIL ACTION NO. 4:14-CV-525-O |
| | § | |
| JP MORGAN CHASE BANK, N.A. | § | |

**FINDINGS, CONCLUSIONS, AND RECOMMENDATION REGARDING
DEFENDANT'S MOTION TO DISMISS**

Pending before the Court is Defendant JP Morgan Chase Bank, N.A.'s Rule 12(b)(6) Motion to Dismiss [doc. # 6], filed July 11, 2014. Having carefully considered the Defendant's motion, and noting that the *pro-se* Plaintiffs wholly failed to file a response, the Court recommends **GRANTING** the Defendant's motion under the doctrine of res judicata as set forth in the Defendant's motion and brief.¹

**NOTICE OF RIGHT TO OBJECT TO PROPOSED
FINDINGS, CONCLUSIONS AND RECOMMENDATION
AND CONSEQUENCES OF FAILURE TO OBJECT**

Under 28 U.S.C. § 636(b)(1), each party to this action has the right to serve and file specific written objections in the United States District Court to the United States Magistrate

¹ The parties in this case were also all parties in cause No. 4: 14-CV-169-A, in which, *inter alia*, all claims asserted by Plaintiffs against Defendant JP Morgan Chase Bank, N.A were dismissed with prejudice in an order dated June 23, 2014. *See Hall v. Tower Land & Inv. Co.*, 512 F.2d 481, 483 (5th Cir. 1975) ("[T]his Circuit has held that granting defendant's motion to dismiss for plaintiff's failure to state a claim upon which relief can be granted operates as an adjudication on the merits.") In addition, this cause and cause No. 4:14-CV-169-A both involve the same cause of action as defined pursuant to res judicata. *Campos v. Ocwen Loan Servicing, LLC*, No. H-13-2062, 2013 WL 5614317, at *1 (S.D. Tex. Oct. 14, 2013) ("The Fifth Circuit uses a transactional test to determine whether both suits involve the same cause of action. If the primary right and duty and the delict or wrong are the same in each action, the cause of action is the same.") (internal citations and quotations omitted); *see Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th Cir. 2005) ("Under the transactional test, a prior judgment's preclusive effect extends to all rights of the plaintiff with respect to all or any part of the transaction, or series of connected transactions, out of which the original action arose."); *Maxwell v. U.S. Bank Nat'l Ass'n*, No. H-12-534, 2013 WL 265975, at *6 (S.D. Tex. Jan. 4, 2013) (finding suit barred by res judicata where, "[d]espite alleging an array of causes of action in the three legal actions, Plaintiff has steadfastly challenged Defendants and others' rights to foreclose on his mortgage and sell his real property.")

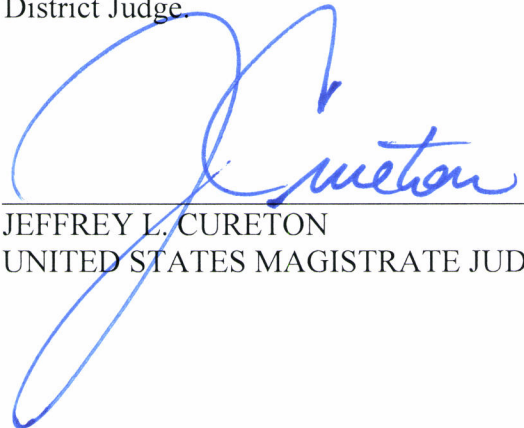
Judge's proposed findings, conclusions and recommendation within fourteen (14) days after the party has been served with a copy of this document. The United States District Judge need only make a *de novo* determination of those portions of the United States Magistrate Judge's proposed findings, conclusions and recommendation to which specific objection is timely made. *See* 28 U.S.C. § 636(b)(1). Failure to file, by the date stated above, a specific written objection to a proposed factual finding or legal conclusion will bar a party, except upon grounds of plain error or manifest injustice, from attacking on appeal any such proposed factual findings and legal conclusions accepted by the United States District Judge. *See Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415, 1428–29 (5th Cir. 1996) (en banc).

ORDER

Under 28 U.S.C. § 636, it is hereby **ORDERED** that each party is granted until **September 26, 2014** to serve and file written objections to the United States Magistrate Judge's proposed findings, conclusions and recommendation. It is further **ORDERED** that if objections are filed and the opposing party chooses to file a response, the response shall be filed within seven (7) days of the filing date of the objections.

It is further **ORDERED** that the above-styled and numbered action, previously referred to the United States Magistrate Judge for findings, conclusions and recommendation, be and hereby is returned to the docket of the United States District Judge.

SIGNED September 12, 2014.



JEFFREY L. CURETON
UNITED STATES MAGISTRATE JUDGE

JLC/knv